
(2015) 08 BOM CK 0028
In the Bombay High Court
Case No : Criminal Appeal No. 505 of 2006

State of Maharashtra

APPELLANT

Vs

Kishor Nathusingh Thakur and Others

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 498A, 506

Citation : (2015) 08 BOM CK 0028

Hon'ble Judges : A.B. Chaudhari, J; I.K. Jain, J

Bench : Division Bench

Advocate : D.B. Patel, Addl. P.P., for the Appellant; S.K. Sable, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.K. Jain, J—Appellant/State of Maharashtra has preferred this Appeal against the judgment and order dated 28.4.2006 passed by the learned 3rd Ad-hoc Additional Sessions Judge, Wardha in Sessions Trial No. 73/2005. By the said judgment and order, the learned Additional Sessions Judge acquitted the respondents of the offences punishable under Sections 302, 498A, 506 read with Section 34 of the Indian Penal Code.

For the sake of convenience, we shall refer the respondents as accused in their original status as referred before the trial Court.

2. The prosecution case briefly stated is as under :-

(i) PW 3 Suman Bhauraoji Yelne was resident of Shastri Ward, Hinganghat, District Wardha. She was serving as a teacher. She had three daughters and a son. The son was studying at Pune. One daughter was studying in B.D.S. at Sawangi. Another daughter Manakshi was married. After divorce she was residing with PW 3 Suman. Her daughter Kalpana was married to accused no.1 Kishor Thakur on 24.6.2002. At the time of incident, couple had a two-year-old daughter.

(ii) It is the prosecution case that accused no.1 Kishor was jobless. He used to demand money from Kalpana. In turn, Kalpana was demanding money from her mother Suman. The demand sometimes was of Rs. 1,000/- and sometimes of Rs. 2000/-. Whenever demanded, Suman was trying to fulfill the demand. It is alleged that in case money was not paid Kalpana was kept without food. Accused No. 2 mother-in-law and accused no.3 sister-in-law used to instigate accused no.1 Kishor to beat Kalpana. She disclosed about ill-treatment to her mother. Suman tried to pacify the accused but her efforts turned futile.

(iii) On 28.3.2005 at 6.00 p.m. while Suman was passing through the house of her daughter, Kalpana demanded money from her. She promised to give her money after receiving salary.

(iv) On 30.3.2005 in the night, accused beat Kalpana. The noise of quarrel between accused Kishor and Kalpana was heard by the neighbours..

(v) On 31.3.2005 at around 7.30 a.m. while Kalpana was being taken to hospital, her husband beat her with fist blows. She was carrying nine months pregnancy. Kalpana sustained injuries due to beating. She was admitted to the hospital.

(vi) It appears that Medical Officer of Cottage Hospital informed the Police Station on phone. PSI Masram received the call that Kalpana was admitted and she disclosed about ill-treatment at the hands of her husband. On receiving telephonic message, PSI Masram went to the Cottage Hospital. He verified from the Medical Officer whether patient was fit to make her statement. Doctor opined that patient was unable to speak properly. Then, PSI Masram made inquiry from Kalpana and recorded her statement.

(vii) At 10.20 a.m. Kalpana died. PW 5 PSI Masram received intimation from Cottage Hospital, Hingaghat about the death of Kalpana. He registered AD No. 15/2005 and conducted enquiry into the accidental death. During enquiry, PSI Masram drew inquest panchanama, scene of occurrence panchanama and seizure panchnama of the articles recovered from the spot. The dead body was sent for post-mortem.

(viii) That day, Suman Yelne had been to the school in the morning. She noticed that the door of house of Kalpana was closed. At about 1.30 p.m. when she returned from the school, she was informed by the neighbours that Kalpana was serious and admitted to hospital. She rushed to the hospital. She was informed that her daughter Kalpana died. She then went to Hinganghat Police Station and lodged report. On the basis of report of Suman Crime No. 60/2005 was registered.

(ix) On 2.4.2005 PW 6 PSI Sheikh. Jamir received investigation of the crime. He recorded statements of complainant and witnesses. Seized articles including viscera of the deceased preserved by the Medical Officer at the time of post-mortem and her clothes were sent to Chemical Analyser. On completion of investigation, charge-sheet was filed against the accused. In due course, case

was committed to the Court of Sessions.

3. Charge of the alleged offences was explained to the accused at Exh.20. They pleaded not guilty to the charge. Their defence was of total denial and false implication.

4. We have heard the learned Advocates for the parties. After giving our anxious consideration to the facts and circumstances of the case, arguments advanced, evidence on record and the judgment delivered by the learned Additional Sessions Judge, for the below-mentioned reasons, we are of the opinion that there is no merit in the Appeal.

5. The prosecution examined in all six witnesses to substantiate its case. It can be seen from the evidence of PW 1 Sakhubai and PW 2 Madhukar that they were the neighbours of the deceased. It is stated by Sakhubai that before 7/8 months, at about 3.00 a.m. she had come out of the home for urination and while coming back, she heard that accused was hurling abuses to the deceased. She does not know about the relations between accused and the deceased. From her evidence it is clear that she does not support the prosecution on the alleged harassment.

6. According to PW 2 Madhukar, during summer when he was going for his work in the morning, he saw accused Kishor dragging Kalpana upto the rickshaw. He however admitted in the cross-examination that Kalpana was unable to walk and he did not notice who made the deceased to sit in the rickshaw. Considering the admissions elicited in the cross-examination of PW 1 Sakhubai and PW 2 Madhukar, Trial Court did not find it proper to place reliance on their testimonies.

7. PW 3 Suman is the star witness. She is the mother of deceased Kalpana and a teacher by profession. She stated that accused used to make demand of Rs. 1,000 -Rs. 2000/- from her daughter and Kalpana was asking her to give money. Accordingly, she was giving money to accused Kishor. She further stated that in December 2003, Kalpana told her about ill-treatment and demand of money. Eight days thereafter, she came to know through the neighbours that Kalpana was beaten by the accused.

8. In her cross-examination, she admits that her take home salary was Rs. 9,853/- per month. She was spending Rs. 6,000/- per month on the education of one daughter and a son. Besides, another daughter Manakshi was also residing with her. Manakshi was a divorcee. Suman never visited the house of accused. It is stated by Suman that she came to know about ill-treatment through neighbours. The neighbours who have been examined do not support the evidence of Suman.

It is pertinent to note from the cross-examination of PW 3 Suman that Kalpana and Kishor performed love marriage. She was fair enough to admit that she did not agree to the said marriage and she was unhappy with the same. In view of these facts elicited in cross-examination of PW 3 Suman, it would be risky to

place reliance on her testimony in the absence of corroboration.

9. Needless to state that to bring home an offence u/s. 302 of the I.P.C. it is obligatory on the part of the prosecution to prove the factum of homicidal death. In the instant case, from the evidence of PW 4 Dr. Govardhan Dudhe, it can be said that no external injuries were found on the body of Kalpana at the time of performing post-mortem. Internal injuries haematoma under left side of scalp 2 1/2" x 3 1/2" and uterine wall contused on both sides were noticed by the Medical Officer. The probable cause of death opined by Dr. Dudhe was aspiration pneumonia due to shock due to internal injuries which were present. Absolutely there is no iota of evidence to show that the injuries shown in post-mortem report (Exh.36) were caused by the accused.

10. Accused have not disputed genuineness of the inquest panchnama (Exh.30), seizure memo (Exh.31) and spot panchnama (Exh. 37). Though pieces of bangles were found lying on the spot, that alone cannot be an incriminating circumstance against the accused. Further no injury is shown in the Inquest panchnama and nothing to implicate the accused is apparent from the spot panchnama.

11. In the light of the above and from the overall scrutiny of the evidence and the material placed on record, we do not find any perversity in the judgment of the trial Court. In the result, we are not inclined to interfere with the same.

12. Criminal Appeal No. 505/2006 stands dismissed. Bail Bonds of the accused shall stand cancelled.